

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 8/3/2022
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SAMUEL GOWRIE and HEATHER GOWRIE,

Plaintiffs,

-against-

HYSTER-YALE GROUP, INC., d/b/a HYSTER  
COMPANY; HYSTER-YALE MATERIALS  
HANDLING, INC., d/b/a HYSTER COMPANY; CROWN:  
EQUIPMENT CORPORATION; EEVELLE, LLC; MTA  
NEW YORK CITY TRANSIT; "XYZ ENTITY #1"  
through "XYZ ENTITY #10", the last ten names  
fictitious and unknown to Plaintiffs, being the names of  
real juridical persons and business entities, including, but  
not limited to, corporations, limited liability companies,  
limited partnerships, limited liability partnerships  
general partnerships, trusts or estates, which manufactured,  
sold, serviced and/or maintained the forklift and/or forklift  
cab enclosure involved in Plaintiff Sam Gowrie's accident  
or injuries alleged herein,

Defendants.  
-----X

1:19-cv-04714 (VM)

## NOTICE OF MOTION

**PLEASE TAKE NOTICE**, that upon the accompanying Declaration of Steven R. Haffner, dated August 1, 2022; and upon all prior proceedings had herein, Plaintiffs, by their attorneys, Gordon & Haffner, LLP, will move this Court before the Honorable Victor Marrero, on August 22, 2022 at 9:30 a.m., or as soon thereafter as the parties may be heard, at the United States Courthouse, located at 500 Pearl Street, New York, New York, Courtroom B, for an order pursuant to 28 USC § 2107(c) extending Plaintiffs' time to file a notice of appeal from this Court's order of dismissal, dated June 1, 2022 (DE #60) and for such other and further relief as this Court deems

just and proper.

Dated: August 1, 2022

**GORDON & HAFFNER, LLP**  
*Attorneys for Plaintiffs*

By: /s/Steven R. Haffner  
Steven R. Haffner, Esq. (SH 6271)  
480 Mamaroneck Avenue  
Harrison, New York 10528  
(718) 631-5678

**Request GRANTED.**

The deadline to file a notice of appeal shall be extended until August 22, 2022.

**SO ORDERED.**

8/3/2022

DATE

  
VICTOR MARRERO, U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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sold, serviced and/or maintained the forklift and/or forklift  
cab enclosure involved in Plaintiff Sam Gowrie’s accident  
or injuries alleged herein,

Defendants.  
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1:19-cv-04714 (VM)

**DECLARATION BY  
STEVEN R. HAFFNER  
IN SUPPORT**

Steven R. Haffner, a member of the Bar of this Court, declares as follows:

1. I am a member of Gordon & Haffner, LLP, attorneys for the Plaintiffs herein and submit this declaration in support of Plaintiffs’ motion, pursuant to 29 U.S.C. 2107 (c), extending their time to file an appeal from this Court’s dismissal order dated June 1, 2022 (DE #60).

2. The order which Plaintiffs seek an extension of time to appeal was entered *sua sponte* by the Court without notice or opportunity to be heard. Nor did the Court’s second request for a status report (#58), which Plaintiffs filed, notify Plaintiffs that, unless they filed their anticipated motion within the time frame estimated in that status report or filed an updated report, that the Court would dismiss the case.

3. Consequently, Plaintiffs lacked an opportunity to be heard to explain why the case

should not be dismissed.

4. Further, about six weeks ago, I was diagnosed with critically severe anemia, a condition which explained why, since about the beginning of this year, I had been experiencing difficulty keeping up with our heavy caseload and professional commitments, made heavier by the rescheduling of matters which had been tolled and delayed by the pandemic.

5. In fact, I believe the extreme fatigue caused by my anemia<sup>1</sup> not only was a factor contributing to my neglect to file a notice of appeal by June 31, 2022, but also contributed to my neglect to further update the Court in May on the status of Plaintiffs' efforts to obtain the third-party disclosure needed to file the anticipated motion.

6. I respectfully submit the above constitutes good cause or excusable neglect warranting the relief requested.

7. Because the relief requested does not depend on the determination of any novel, unsettled or complicated issue of law, Plaintiffs respectfully request that the requirement of a memorandum of law be waived.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1<sup>st</sup> day of August 2022.

/s/ Steven R. Haffner  
Steven R. Haffner

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<sup>1</sup> Upon the Court's request, I will submit, *in camera*, medical documentation supporting this condition.